

# **FDIC Eligibility Representations and Certifications**

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SUBMITTED BY:

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Contractor Name

# FDIC ELIGIBILITY REPRESENTATIONS AND CERTIFICATIONS

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## **ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection of information is estimated to average one-hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), OES, Room F-4001, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503.

## **PRIVACY ACT STATEMENT**

Collection of this information is authorized by the Federal Deposit Insurance Act, 12 U.S.C. §§ 1891, 1821, and Executive Order 9397. This information will be primarily used to examine a contractor's eligibility for potential FDIC contract awards and the information provided may be disclosed to licensing authorities by the FDIC in examining the contractor's eligibility.

Information may also be disclosed to appropriate Federal, state, or local agencies for law enforcement purposes when a violation or possible violation of a civil or criminal law is apparent; to individuals involved in judicial or administrative proceedings; and to a Congressional office in response to an inquiry made at the individual's request. Information may also be disclosed in accordance with the other routine uses set forth in the FDIC's Financial Information System 30-64-0012. Furnishing the requested information, including your Social Security Number, is voluntary. However, failure to furnish all requested information may preclude you from receiving an FDIC contract.

## FDIC ELIGIBILITY REPRESENTATIONS AND CERTIFICATIONS

### I. PREAMBLE

*The following representations and eligibility certifications shall be executed by an official authorized to bind the contractor, and shall be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the contractor and/or certifying official subject to prosecution under 18 United States Code (U.S.C.) § 1001, 1007, and 1014. For purposes of these certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under 18 U.S.C. The offeror shall provide notice to the Contracting Officer within 10 days or at any time prior to contract award, if the contractor learns that one or more of these certifications was erroneous when submitted or has become erroneous by reason of changed circumstances. In addition, any such misrepresentations or miscertifications may render the contractor and/or the certifying official subject to administrative remedies by the FDIC, to include suspension and/or exclusion from contracting, or termination of contract. For further information concerning these remedies, consult the FDIC's suspension and exclusion regulation, 12 CFR part 367 (specifically, sections 367.6(a) (5) and (6), and 367.8(a) (2) and (3)).*

The contractor makes the following representations and certifications as part of its proposal. (Check or complete all appropriate boxes or blanks.)

### II. IDENTIFYING INFORMATION

#### 1. Type of Organization

The contractor operates as ☐ an individual, ☐ a State or local agency, ☐ a partnership, ☐ a joint venture, ☐ a nonprofit organization, ☐ an educational institution, ☐ a corporation organized and existing under the laws of the state of \_\_\_\_\_.

#### 2. Parent Information

The contractor ☐ is, ☐ is not, owned or controlled by a parent company. If it is, complete the blanks below and include an organizational chart of parent company:

|                        |       |                                      |
|------------------------|-------|--------------------------------------|
| NAME OF PARENT COMPANY |       | TAXPAYER IDENTIFICATION NUMBER (TIN) |
| ADDRESS                |       |                                      |
| CITY                   | STATE | ZIP CODE                             |

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## 3. Joint Venture Information

The contractor [ ] is, [ ] is not, a joint venture. If contractor is a joint venture, complete the information below.

|  |       |          |
|--|-------|----------|
| NAME OF JOINT VENTURE PARTNER  |       |          |
| JOINT VENTURE PARTNER'S TAXPAYER IDENTIFICATION NUMBER (TIN)             |       |          |
| JOINT VENTURE TAXPAYER IDENTIFICATION NUMBER (TIN) <i>(If different)</i> |       |          |
| MAIN OFFICE ADDRESS  |       |          |
| CITY   | STATE | ZIP CODE |

Has a Joint Venture Agreement been executed? [ ] Yes, [ ] No *(If yes, attach Agreement.)*

## 4. Subcontractor Information

The contractor [ ] will, [ ] will not, use subcontractors in the performance of the contract. If it will, complete the information below.

|                       |                                      |          |
|-----------------------|--------------------------------------|----------|
| NAME OF SUBCONTRACTOR | TAXPAYER IDENTIFICATION NUMBER (TIN) |          |
| MAIN OFFICE ADDRESS   |                                      |          |
| CITY                  | STATE                                | ZIP CODE |

|                       |                                      |          |
|-----------------------|--------------------------------------|----------|
| NAME OF SUBCONTRACTOR | TAXPAYER IDENTIFICATION NUMBER (TIN) |          |
| MAIN OFFICE ADDRESS   |                                      |          |
| CITY                  | STATE                                | ZIP CODE |

|                       |                                      |          |
|-----------------------|--------------------------------------|----------|
| NAME OF SUBCONTRACTOR | TAXPAYER IDENTIFICATION NUMBER (TIN) |          |
| MAIN OFFICE ADDRESS   |                                      |          |
| CITY                  | STATE                                | ZIP CODE |

*(If additional space is necessary, attach separate sheets.)*

# FDIC ELIGIBILITY REPRESENTATIONS AND CERTIFICATIONS

## III. PART 366 ELIGIBILITY

### 1. Definitions

Terms used in these representations and certifications are defined in 12 C.F.R. § 366.2, as follows:

- (a) **Affiliated business entity** means a company that is under the control of the contractor, is in control of the contractor, or is under common control with the contractor.
- (b) **Company** means any corporation, firm, partnership, society, joint venture, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, or any other organization or institution, but shall not include any corporation the majority of the shares of which are owned by the United States, any state, or the District of Columbia.
- (c) **Conflict of Interest** means a situation in which:
  - (1) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract; or
  - (2) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, is an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit; or
  - (3) A contractor; any management officials or affiliated business entities of a contractor; or any employees; agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, has ever been suspended, excluded, or debarred from contracting with a Federal entity or has ever had a contract with the FDIC, RTC, FSLIC, or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or
  - (4) Any other facts exist which the FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interests of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.
- (d) **Contractor** means a person which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services.
- (e) **Control** means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company's directors or trustees; or the ability to exercise a controlling influence over the company's management and policies. For purposes of the definition, a general partner of a limited partnership is presumed to be in control of that partnership.
- (f) **Default on a material obligation** means a loan or advance from an insured depository institution which has ever been delinquent for 90 or more days as to payment of principal or interest, or combination thereof, with a remaining balance of principal and accrued interest on the ninetieth day, or any time thereafter, in an amount in excess of \$50,000.
- (g) **FDIC** means the Federal Deposit Insurance Corporation in its receivership and corporate capacities. It does not mean the FDIC in its conservatorship capacity or when it is operating a bridge bank as defined, respectively, in 12 U.S.C. 1821 (c) and (n).
- (h) **Insured depository institution** means any bank or savings association the deposits of which are insured by the FDIC.

# FDIC ELIGIBILITY REPRESENTATIONS AND CERTIFICATIONS

## Definitions (Continued)

- (i) **Management Official** means any shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official means only a member of such a committee but, if no such committee exists, management official means each of the general partners.
- (j) **Offer** means a proposal to provide services to the FDIC. For law firms or sole practitioner lawyers, "offer" also means the application submitted by the law firm to the FDIC.
- (k) **Pattern or Practice of Defalcation regarding obligations** means two or more instances in which:
  - (1) A loan or advance from an insured depository institution is in default for ninety (90) or more days as to payment of principal, interest, or a combination thereof and there remains a legal obligation to pay an amount in excess of \$50,000; or
  - (2) A loan or advance from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000 to the insured depository institution.
- (l) **Person** means an individual or company.
- (m) **RTC** means the Resolution Trust Corporation in any of its capacities.
- (n) **Subcontractor** means a person that enters into a contract with an FDIC contractor to perform services under a proposed or existing contract with the FDIC.
- (o) **Substantial loss to Federal deposit insurance funds** means:
  - (1) A loan or advance from an insured depository institution, which is currently owed to the FDIC, RTC, FSLIC, or their successors, or the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), the FRF, or funds maintained by the RTC for the benefit of insured depositors, that is or has ever been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof, and on which there remains a legal obligation to pay an amount in excess of \$50,000;
  - (2) An obligation to pay outstanding, unsatisfied, final judgement in excess of \$50,000 in favor of the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF, or the funds maintained by the RTC for the benefit of insured depositors; or
  - (3) A loan or advance from an insured depository institution which is currently owed to the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF, or the funds maintained by the RTC for the benefit of insured depositors, where there has been failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of \$50,000.

## 2. Representations as to Disqualifying Conditions (12 C.F.R. 366.4(a))

To the best of the contractor's knowledge:

- (a) Has the contractor been convicted of a felony?

☐ Yes      ☐ No (If yes, explain below.)

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- (b) Has the contractor been removed from or prohibited from participating in the affairs of an insured depository institution by the financial institution's regulatory group?

☐ Yes      ☐ No (If yes, explain below.)

- (c) Has the contractor demonstrated a pattern or practice of defalcation?

☐ Yes      ☐ No (If yes, explain below.)

- (d) Has the contractor caused a substantial loss to the Federal deposit insurance funds?

☐ Yes      ☐ No (if yes, explain below.)

As used herein, "pattern or practice of defalcation" and "substantial loss to Federal deposit insurance funds" are defined in 12 C.F.R. 366.2 and reproduced in Part III of these representations and certifications for your convenience.

### 3. Representations as to Conflicts of Interest (12 C.F.R. 366.2(c))

To the best of the contractor's knowledge, with respect to the contractor and any management officials or affiliated business entities of the contractor; or any employees, agents, or subcontractors who will perform services under the contract:

- (a) Are there any personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who will perform services under this contract?

☐ Yes      ☐ No

- (b) Are any such person(s) an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit?

☐ Yes      ☐ No

- (c) Have any such person(s) ever been suspended, excluded, or debarred from contracting with a Federal entity?

☐ Yes      ☐ No

- (d) Have any such person(s) ever had a contract with the FDIC, RTC, FSLIC, or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities?

☐ Yes      ☐ No



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- (e) Have any such person(s) ever been engaged to provide services or advice on the institutions and/or assets that are the subject of this solicitation?

☐ Yes      ☐ No

- (f) Does the contractor recognize that it generally may not later purchase assets it will manage under this contract and performance of this contract may disqualify the contractor from follow-up work where information obtained in the performance of the contract gives the contractor an unfair competitive advantage?

☐ Yes      ☐ No

*If the contractor cannot certify that there are no conflicts of interest, it may describe the circumstances of any conflicts and request a waiver or propose a method for the elimination of the conflict.*

#### 4. Representations as to Defaults (C.F.R. 366.2(f))

Has the contractor or any company under the contractor's control defaulted on a material obligation during the ten (10) years proceeding the submission of this offer?

☐ Yes      ☐ No *(If yes, attach a description of all such instances.)*

*A "default on a material obligation" is defined in 12 C.F.R. 366.2 and reproduced in Part III of these representations and certifications for your convenience. Defaults should be reported for companies under the contractor's control at the time of the default, regardless of whether the company is presently under the contractor's control, and for any company currently under the contractor's control, regardless of whether it was under the contractor's control at the time of the default.*

#### 5. Representations as to Employees and Subcontractors (C.F.R. 366.6(a)(3))

Does the contractor agree that it will prohibit any employee, agent, or subcontractor from performing services under the proposed contract until the contractor verifies that the employee, agent, or subcontractor, to the best of that person's knowledge, would answer "No" to the questions in paragraph 2 (Disqualifying Conditions), paragraph 3 (Conflicts of Interest) questions (a) through (e), and paragraph 4 (Defaults), above?

☐ Yes      ☐ No *(If no, explain below.)*

## IV. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposal. The contractor also agrees to notify the FDIC in writing within 10 days after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions contained within these representations and certifications. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the contractor intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the examination of the contractor's eligibility for potential contract awards.

|  |       |  |
|--|-------|--|
| SOLICITATION NUMBER                              |       |  |
| NAME OF CONTRACTOR <i>(Please print or type)</i> |       | CONTRACTOR'S TAX IDENTIFICATION NUMBER (TIN) |
| TITLE  |       | CONTRACTOR'S TELEPHONE NUMBER                |
| OFFICE ADDRESS                                   |       |  |
| CITY   | STATE | ZIP CODE                                     |
| SIGNATURE  |       | DATE SIGNED                                  |